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Attorneys for Plaintiffs and the Proposed Class
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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO AND OAKLAND DIVISION

THOMAS FERNANDEZ and LORA SMITH,
 individually and on behalf of a class of all other
 persons similarly situated,

Plaintiffs,

vs.

K-M INDUSTRIES HOLDING CO., INC.;
 K-M INDUSTRIES HOLDING CO., INC.
 ESOP PLAN COMMITTEE; WILLIAM E.
 AND DESIREE B. MOORE REVOCABLE
 TRUST; TRUSTEES OF THE WILLIAM E.
 AND DESIREE B. MOORE REVOCABLE
 TRUST; CIG ESOP PLAN COMMITTEE;
 NORTH STAR TRUST COMPANY;
 DESIREE B. MOORE REVOCABLE TRUST;
 WILLIAM E. MOORE MARITAL TRUST;
 WILLIAM E. MOORE GENERATION-
 SKIPPING TRUST; and DESIREE MOORE,
 BOTH IN HER INDIVIDUAL CAPACITY
 AND AS TRUSTEE OF THE WILLIAM E.
 AND DESIREE B. MOORE REVOCABLE
 TRUST'S SUCCESSOR TRUSTS NAMED
 ABOVE,

Defendants

Case No. C-06-07339 MJJ

**STIPULATION AND [PROPOSED]
 ORDER TO AMEND COMPLAINT**

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5 *Attorneys for Plaintiffs and the Proposed Class*
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1 WHEREAS, the Court's Pretrial Order states that parties may be added until May 25,
2 2007;

3 WHEREAS, under Federal Rule of Civil Procedure 15(a), a party may amend a pleading
4 by leave of court or by written consent of the adverse party;

5 WHEREAS Plaintiffs wish to amend their complaint by adding parties and making
6 certain other changes to the allegations of the complaint;

7 WHEREAS Defendants are willing to consent to the filing of the proposed first amended
8 complaint ("FAC") only if conditioned on Plaintiffs' express agreement as follows:

- 9 · Defendants' consent is solely a procedural accommodation;
- 10 · Defendants' consent does not represent and will not be urged by Plaintiffs to
11 represent any acknowledgment of the propriety of any or all of Plaintiffs' existing
12 or proposed claims and/or amendments; and
- 13 · By entering into this Stipulation, no party waives any substantive rights.
14 Defendants have not waived but instead have preserved in full all their substantive
15 rights and defenses, including but not limited to: all substantive arguments that
16 could have been interposed in or as part of an opposition to a motion for leave to
17 amend the complaint; and defenses arising out of applicable statutes of limitation,
18 and the doctrines of laches and estoppel.

19 Accordingly IT IS HEREBY AGREED AND STIPULATED by the parties through their
20 counsel of record, as follows:

- 21 1. Plaintiffs may file a FAC in the form attached hereto as Exhibit 1;
 - 22 2. Defendants' consent to the filing of the FAC is solely a procedural
23 accommodation;
 - 24 3. Defendants' consent does not represent and will not be urged by Plaintiffs to
25 represent any acknowledgment of the propriety of any or all of Plaintiffs' existing
26 or proposed claims and/or amendments; and
 - 27 4. By entering into this Stipulation, no party waives any substantive rights.
- 28

Defendants have not waived but instead have preserved in full all their substantive rights and defenses, including but not limited to: all substantive arguments that could have been interposed in or as part of an opposition to a motion for leave to amend the complaint; and defenses arising out of applicable statutes of limitation, and the doctrines of laches and estoppel.

Dated: May 25, 2007

LEWIS, FEINBERG, LEE,
RENAKER & JACKSON, P.C.

By: /s/
Todd Jackson
*Attorneys for Plaintiffs
and the Proposed Class*

Dated: _____

LOVITT & HANNAN, INC.

By: _____
Henry Bornstein
*Attorneys for Defendant K-M Industries
Holding Co., Inc.; K-M Industries Holding
Co., Inc. ESOP Plan Committee; and CIG
ESOP Plan Committee*

Dated: _____

HENNIGAN, BENNETT & DORMAN LLP

By: _____
Robert L. Palmer
*Attorneys for Defendant William E. and
Desiree B. Moore Revocable Trust; Desiree
B. Moore Revocable Trust; William E.
Moore Marital Trust; William E. and
Desiree B. Moore Revocable Trust
Generation-Skipping Trust; and Desiree
Moore*

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Defendants have not waived but instead have preserved in full all their substantive rights and defenses, including but not limited to: all substantive arguments that could have been interposed in or as part of an opposition to a motion for leave to amend the complaint; and defenses arising out of applicable statutes of limitation, and the doctrines of laches and estoppel.

Dated: _____

LEWIS, FEINBERG, LEE,
RENAKER & JACKSON, P.C.

By: _____

Todd Jackson
*Attorneys for Plaintiffs
and the Proposed Class*

Dated: May 25, 2007

LOVITT & HANNAN, INC.

By: _____

Henry Bornstein
*Attorneys for Defendant K-M Industries
Holding Co., Inc.; K-M Industries Holding
Co., Inc. ESOP Plan Committee; and CIG
ESOP Plan Committee*

Dated: MAY 25, 2007

HENNIGAN, BENNETT & DORMAN LLP

By: _____

Robert L. Palmer (MB)
Robert L. Palmer
*Attorneys for Defendant William E. and
Desiree B. Moore Revocable Trust; Desiree
B. Moore Revocable Trust; William E.
Moore Marital Trust; William E. and
Desiree B. Moore Revocable Trust
Generation-Skipping Trust; and Desiree
Moore*

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///
///

1 Dated: May 25, 2007

MORGAN, LEWIS & BOCKIUS LLP

2
3 By: /s/
4 Nicole Diller
5 *Attorneys for Defendant North Star Trust*
6 *Company*

7 IT IS SO ORDERED.

8 Dated: _____

Hon. Martin J. Jenkins
United States District Judge

Daniel Feinberg – CA State Bar No. 135983
 Todd F. Jackson – CA State Bar No. 202598
 Margaret E. Hasselman – CA State Bar No. 228529
 Nina Wasow – CA State Bar No. 242047
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IN THE UNITED STATES DISTRICT COURT
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 TRUST; TRUSTEES OF THE WILLIAM E.
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 TRUST; CIG ESOP PLAN COMMITTEE;
 NORTH STAR TRUST COMPANY;
 DESIREE B. MOORE REVOCABLE TRUST;
 WILLIAM E. MOORE MARITAL TRUST;
 WILLIAM E. MOORE GENERATION-
 SKIPPING TRUST; and DESIREE MOORE,
 BOTH IN HER INDIVIDUAL CAPACITY
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 TRUST'S SUCCESSOR TRUSTS NAMED
 ABOVE,

Defendants.

Case No. C 06-07339 MJJ

[PROPOSED] FIRST AMENDED
COMPLAINT – CLASS ACTION

[PROPOSED] FIRST AMENDED COMPLAINT – CLASS ACTION

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JURISDICTION AND VENUE

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2 1. This action arises under Title I of the Employee Retirement Income Security Act
3 of 1974 (“ERISA”), 29 U.S.C. §§ 1001 et seq., and is brought by Plaintiffs to enjoin acts and
4 practices which violate the provisions of Title I of ERISA, to make good to the Plan losses
5 resulting from fiduciary violations, restore to the Plan any profits which have been made by the
6 breaching fiduciaries through the use of Plan assets, and to obtain other appropriate equitable
7 and legal remedies in order to redress violations and enforce the provisions of Title I of ERISA.

8 2. This Court has subject matter jurisdiction over this action pursuant to ERISA §
9 502(e)(2), 29 U.S.C. § 1132(e)(2).

10 3. Venue is properly laid in this District pursuant to ERISA § 502(e)(2), 29 U.S.C.
11 § 1132(e)(2), because the employee benefit plan at issue was administered in this District during
12 the relevant time, some or all of the events or omissions giving rise to the claims occurred in
13 this District, and one or more of the Defendants may be found in this District.

INTRA-DISTRICT ASSIGNMENT

14
15 4. This action arises in San Mateo County in that the employee benefit plan at issue
16 is administered in San Carlos, California, and some of the breaches alleged took place in San
17 Carlos, California.

PARTIES

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19 5. At all relevant times, Plaintiff Thomas Fernandez has been a participant, as
20 defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the K-M Industries Holding Co., Inc.
21 Employee Stock Ownership Plan (“the KMH Plan”) or one of its predecessor plans, the
22 California Capital Insurance Company Employee Stock Ownership Plan (“the CIG Plan”).
23 Plaintiff Fernandez resides in San Ramon, California. Plaintiff Fernandez was employed by
24 CIG from in or about July 1996, until in or about October 2005.

25 6. At all relevant times, Plaintiff Lora Smith has been a participant, as defined in
26 ERISA § 3(7), 29 U.S.C. § 1002(7), in the KMH Plan or one of its predecessor plans, the CIG
27 Plan. Plaintiff Smith resides in Modesto, California. Plaintiff Smith was employed by CIG
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1 from in or about September 1996, until in or about October 2001.

2 7. At all relevant times, Defendant K-M Industries Holding Co., Inc. (“KMH”) was
3 the Sponsor of the KMH Plan, within the meaning of ERISA § 3(16)(B). At some or all
4 relevant times, Defendant KMH was also the Administrator of the KMH Plan, within the
5 meaning of ERISA § 3(16)(A), and a fiduciary of the KMH Plan, within the meaning of ERISA
6 § 3(21)(A), 29 U.S.C. § 1002(21). On information and belief, Defendant KMH was a fiduciary
7 under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that it exercised discretionary authority or
8 discretionary control respecting management of the KMH Plan, and/or exercised authority or
9 control respecting management or distribution of the KMH Plan’s assets, and/or had
10 discretionary authority or discretionary responsibility in the administration of the KMH Plan.
11 Under the terms of the KMH Plan, Defendant KMH was responsible for appointing the
12 Defendant K-M Industries Holding Co., Inc. ESOP Plan Committee (“KMH Plan Committee”).

13 8. At all relevant times, Defendant William E. and Desiree B. Moore Revocable
14 Trust (“Moore Trust”) was a “party in interest” of the KMH Plan as defined in ERISA § 3(14),
15 29 U.S.C. § 1002(14). Upon information and belief, William E. Moore, now deceased, was a
16 trustee and settlor of the Moore Trust. Upon information and belief, Defendant Desiree B.
17 Moore is and was a trustee and settlor of the Moore Trust.

18 9. Upon information and belief, Defendants Desiree B. Moore Revocable Trust
19 (“Survivor Trust”), William E. Moore Marital Trust (“Marital Trust”), and William E. Moore
20 Generation-Skipping Trust (“Generation-Skipping Trust”) are successors in interest to the
21 Moore Trust. The Survivor Trust, Marital Trust, and Generation-Skipping Trust are referred to
22 collectively as the “Successor Trusts.” Upon information and belief, the Successor Trusts are
23 “parties in interest” of the KMH Plan as defined in ERISA § 3(14), 29 U.S.C. § 1002(14). On
24 information and belief, the Successor Trusts each received some of the proceeds of the sales of
25 KMH Series I and Series P tracking stock to the ESOP. Upon information and belief,
26 Defendant Desiree Moore is a trustee and beneficiary of the Survivor Trust and the Marital
27 Trust and is presently entitled to receive money from the Survivor Trust and the Marital Trust.
28

1 On information and belief, Defendant Desiree Moore is a trustee of the Generation-Skipping
2 Trust. By virtue of the Successor Trusts' possession of proceeds from the sales of KMH Series I
3 and Series P tracking stock to the ESOP, Defendant Desiree Moore holds assets that belong in
4 good conscience to the ESOP. On information and belief, the Successor Trusts can be found in
5 San Mateo County, California.

6 10. At all relevant times, Defendant KMH delegated to Defendant KMH Plan
7 Committee some or all of the duties of acting as the plan administrator of the KMH Plan, and
8 Defendant KMH Plan Committee undertook these duties. At all relevant times, therefore,
9 Defendant KMH Plan Committee was a fiduciary of the KMH Plan, within the meaning of
10 ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). On information and belief, Defendant KMH Plan
11 Committee was also a fiduciary under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because it
12 exercised discretionary authority or discretionary control respecting management of the Plan,
13 and/or exercised authority or control respecting management or distribution of the Plan's assets,
14 and/or had discretionary authority or discretionary responsibility in the administration of the
15 Plan. On information and belief, at some relevant times, the sole member of the KMH Plan
16 Committee was William E. Moore, who on information and belief was also a trustee and settlor
17 of the Moore Trust.

18 11. William E. Moore ("Moore") was a founder of Kelly-Moore Paint Co. On
19 information and belief, at all relevant times until his death on November 21, 2004, Moore was
20 the Chairman of Defendant KMH, the "plan sponsor" of the KMH Plan within the meaning of
21 ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B). In addition, at all relevant times, Moore was a
22 "party in interest" as defined in ERISA § 3(14), 29 U.S.C. § 1002(14). Upon information and
23 belief, Moore was a trustee and settlor of the Defendant Moore Trust. On information and
24 belief, William E. Moore was a fiduciary under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in
25 that he exercised discretionary authority or discretionary control respecting management of the
26 KMH Plan and its predecessors, and/or exercised authority or control respecting management or
27 distribution of the KMH Plan's assets and its predecessors' assets, and/or had discretionary
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1 authority or discretionary responsibility in the administration of the KMH Plan and its
2 predecessors.

3 12. Defendant CIG ESOP Plan Committee was the named fiduciary of the CIG Plan,
4 (one of the predecessor plans to the KMH Plan) within the meaning of ERISA § 402, 29 U.S.C.
5 § 1102, and the Administrator of the CIG Plan within the meaning of ERISA § 3(16)(A). At all
6 relevant times, therefore, Defendant Plan Committee was a fiduciary of the KMH Plan, within
7 the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). On information and belief,
8 Defendant CIG ESOP Plan Committee was a fiduciary under ERISA § 3(21)(A), 29 U.S.C. §
9 1002(21)(A), in that it exercised discretionary authority or discretionary control respecting
10 management of the KMH Plan and the CIG Plan, and/or exercised authority or control
11 respecting management or distribution of the KMH Plan's assets and the CIG Plan's assets,
12 and/or had discretionary authority or discretionary responsibility in the administration of the
13 KMH Plan. The CIG Plan was merged into the KMH Plan on or about July 16, 1999. On
14 information and belief, at some or all relevant times, the sole member of the Defendant CIG
15 Plan Committee was William E. Moore, who, on information and belief, was also a trustee and
16 settlor of the Moore Trust.

17 13. Defendant North Star Trust Company ("North Star") is a company with its
18 principal place of business in Chicago, Illinois. On information and belief, Defendant North
19 Star has acted as trustee of the KMH Plan from April 22, 2003, to the present. As trustee of the
20 KMH Plan, Defendant North Star was a fiduciary of the KMH Plan pursuant to ERISA §
21 3(21)(A), 29 U.S.C. § 1002(21)(A), in that it exercised discretionary authority or discretionary
22 control respecting management of the KMH Plan, and/or exercised authority or control
23 respecting management or distribution of the KMH Plan's assets, and/or had discretionary
24 authority or discretionary responsibility in the administration of the KMH Plan.

25 14. At all relevant times, Defendant Desiree Moore was a "party in interest" of the
26 KMH Plan as defined in ERISA § 3(14), 29 U.S.C. § 1002(14). On information and belief, Ms.
27 Moore is a trustee and beneficiary of Defendant Survivor Trust and of Defendant Marital Trust,
28

1 and a trustee of Defendant Generation-Skipping Trust, and therefore holds assets belonging in
2 good conscience to the KMH Plan. At some or all relevant times, Defendant Desiree Moore
3 was also a fiduciary of the KMH Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. §
4 10029(21)(A), in that she exercised discretionary authority or discretionary control respecting
5 management of the KMH Plan, and/or exercised authority or control respecting management or
6 distribution of the KMH Plan's assets, and/or had discretionary authority or discretionary
7 responsibility in the administration of the KMH Plan.

8 15. Defendants KMH, KMH Plan Committee, CIG Plan Committee, Desiree Moore
9 in her individual capacity, and North Star are sometimes referred to as the "Defendant
10 Fiduciaries."

11 **FACTS**

12 **Company History**

13 16. KMH is a California company that owns Kelly-Moore Paint Company ("Kelly-
14 Moore Paint"), a leading manufacturer and seller of paint and paint-related products. KMH also
15 owns Capital Insurance Group ("CIG"), formerly known as California Capital Insurance Group,
16 an insurance company that underwrites property and casualty risks for personal and commercial
17 businesses through independent agents, serving California and other western states. KMH and
18 Kelly-Moore Paint have their principal places of business in San Carlos, California, and CIG's
19 principal place of business is in Monterey, California.

20 17. In the 1960's and 1970's, Kelly-Moore manufactured products that contained
21 asbestos provided by Union Carbide Corp. As a result, Kelly-Moore has been the target of over
22 48,000 lawsuits alleging that its products are responsible for causing cancer and other diseases
23 in their users. Kelly-Moore continues to face thousands of lawsuits over its use of asbestos, and
24 it argued in a 2004 lawsuit against Union Carbide in Texas that the lawsuits threaten its ongoing
25 viability.

26 18. In or around 1985, Kelly-Moore Paint Co. purchased the Calmutual Insurance
27 Company, which later grew through subsequent acquisitions and is now known as Capital
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1 Insurance Group (“CIG”).

2 19. In 1998, the management of Kelly-Moore Paint formed KMH and transferred all
3 the common stock of Kelly-Moore Paint and CIG to KMH. KMH became the sole owner of
4 both Kelly-Moore Paint and CIG. Defendant Moore Trust was the largest shareholder in KMH
5 in 1998 and remains the largest shareholder.

6 20. Also in 1998, KMH established “tracking stocks” to separately track the
7 performance of its two main subsidiary businesses. “Series P stock” was designed to track the
8 performance of Kelly-Moore Paint and its affiliates, and “Series I stock” was designed to track
9 the performance of CIG and its affiliates.

10 21. In 2004, KMH sued Union Carbide in Texas for fraud in connection with its
11 provision of asbestos to KMH. In the lawsuit, KMH argued that Union Carbide concealed
12 information about asbestos’s harmful effects from KMH. In Fall of 2004, a jury found that
13 KMH had been aware of asbestos’s harmful effects since approximately 1964, before it ever
14 purchased asbestos from Union Carbide.

15 **ESOP History**

16 22. In 1998, CIG established the CIG ESOP as an employee stock ownership plan, as
17 defined in Internal Revenue Code § 4975(e)(7).

18 23. Also in 1998, Kelly-Moore Paint established the Kelly-Moore Paint Company
19 ESOP (the “Paint Plan”) as an employee stock ownership plan, as defined in Internal Revenue
20 Code § 4975(e)(7).

21 24. On July 16, 1999, the CIG Plan was merged into the Paint Plan and renamed the
22 K-M Industries Holding Co., Inc. ESOP (“KMH Plan”), also an employee stock ownership plan,
23 as defined in Internal Revenue Code § 4975(e)(7). At all relevant times, the KMH Plan was an
24 employee pension benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2). At
25 all relevant times, the Plan was administered in San Carlos, California. The KMH Plan
26 provides for allocation of different tracking stocks to plan participants depending on the
27 participants’ employer. Series P stock of KMH (tracking the performance of Kelly-Moore
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1 Paint) is allocated only to the accounts of employees of Kelly-Moore Paint and its affiliates.
2 Series I stock (tracking the performance of CIG) is allocated only to the accounts of employees
3 of CIG and its affiliates.

4 **ESOP Transactions**

5 25. Upon information and belief, William Moore acted on behalf of both the Moore
6 Trust and the Plans in the transactions alleged herein.

7 26. Upon information and belief, on or about October 13, 1998, the Paint Plan
8 purchased approximately 33,745,455 shares of KMH Series P stock from the Defendant Moore
9 Trust for approximately \$6.88 per share, for a total purchase price of approximately \$232
10 million. To fund the purchase, the Paint Plan borrowed the entire approximately \$232 million
11 from KMH, which had in turn borrowed \$136 million from CIG.

12 27. Upon information and belief, the Defendant Fiduciaries failed to ensure that they
13 secured an independent expert assessment of the fair market value of the KMH Series P stock
14 purchased by the Paint Plan on October 13, 1998.

15 28. Upon information and belief, the Defendant Fiduciaries failed to investigate
16 adequately the qualifications of any valuation expert retained to prepare the valuation of KMH
17 in connection with the October 13, 1998 purchase of KMH Series P stock by the Paint Plan.

18 29. Upon information and belief, the Defendant Fiduciaries failed to provide
19 complete and accurate information regarding KMH to any valuation expert for use in the
20 valuation prepared in connection with the purchase of KMH Series P stock by the Paint Plan.

21 30. Upon information and belief, the Defendant Fiduciaries failed to make certain
22 that reliance on any valuation expert's advice was reasonably justified under the circumstances
23 of the purchase of KMH Series P stock by the Paint Plan.

24 31. Upon information and belief, the valuation report of Kelly-Moore Paint Co.
25 prepared in connection with the October 13, 1998 transaction failed to take into account KMH's
26 potential liability in asbestos-related litigation, even though information that the company faced
27 significant liability was known to KMH management, including Moore and other fiduciaries, at
28

1 the time.

2 32. Upon information and belief, the valuation report also failed to discount the
3 purchase price of the stock to account for the fact that the stock purchased by the Paint Plan was
4 tracking stock, which generally trades at a discount relative to ordinary common stock.

5 33. On or about October 13, 1999, following the merger of the plans described
6 above, the KMH Plan purchased approximately 8,400,000 shares of KMH Series I stock from
7 the Defendant Moore Trust for \$6.54 per share, for a total purchase price of approximately \$55
8 million. To fund the purchase, the KMH Plan borrowed approximately \$55 million from KMH.
9 The share price for this transaction was established by a valuation report of CIG purporting to
10 value CIG as of October 13, 1999.

11 34. On December 31, 1999, KMH Series I stock was valued at \$3.66 per share, or
12 approximately 56 percent of what the KMH Plan had paid only six weeks earlier.

13 35. Upon information and belief, the Defendant Fiduciaries failed to ensure that they
14 secured an independent expert assessment of the fair market value of the KMH Series I stock
15 purchased by the KMH Plan on October 13, 1999.

16 36. Upon information and belief, the Defendant Fiduciaries failed to investigate
17 adequately the qualifications of any valuation expert retained to prepare the valuation of KMH
18 in connection with the October 13, 1999 purchase of KMH Series I stock by the KMH Plan.

19 37. Upon information and belief, the Defendant Fiduciaries failed to provide
20 complete and accurate information regarding KMH to any valuation expert for use in the
21 valuation prepared in connection with the purchase of KMH Series I stock by the KMH Plan.

22 38. Upon information and belief, the Defendant Fiduciaries failed to make certain
23 that reliance on any valuation expert's advice was reasonably justified under the circumstances
24 of the purchase of KMH Series I stock by the KMH Plan.

25 39. Upon information and belief, the valuation report of CIG prepared in connection
26 with the October 13, 1999 transaction failed to take into account KMH's potential liability in
27 asbestos-related litigation, even though information that the company faced significant liability
28

1 was known to KMH management, including Moore and other fiduciaries, at the time.

2 40. Upon information and belief, the valuation report of CIG also failed to properly
3 discount the purchase price of the KMH Series I stock to account for the fact that the stock
4 purchased by the Plan was tracking stock, which generally trades at a discount relative to
5 ordinary common stock.

6 41. Upon information and belief, neither KMH, nor the fiduciaries of the Plans,
7 appointed an independent fiduciary to represent the Paint Plan or the KMH Plan in the
8 transactions alleged above. Upon information and belief, William Moore acted on behalf of
9 both buyer and seller in both transactions.

10 42. On information and belief, at the times of the Plans' purchases of KMH Series P
11 and Series I stock from the Defendant Moore Trust, KMH management, including William
12 Moore and the other Defendant Fiduciaries, was aware of the potential liabilities facing the
13 company as a result of asbestos-related litigation. Upon information and belief, KMH
14 management, including Moore and other fiduciaries of the Plans, withheld information about
15 KMH's potential asbestos liability from the valuers retained to determine the value of KMH
16 stock for purposes of the Plan transactions until in or about late 2002 or early 2003.

17 43. Upon information and belief, the Defendant Fiduciaries failed to make an honest,
18 objective effort to read the valuation reports, understand them, and question the methods and
19 assumptions that did not make sense.

20 44. In Plan Years 2003 and 2004, the Defendant Fiduciaries failed to obtain a
21 valuation of the Series I and Series P stock held by the KMH Plan, failed to file IRS Form 5500s
22 on behalf of the KMH Plan as required by law, and failed to provide Summary Annual Reports
23 of the KMH Plan to KMH Plan participants as required by law.

24 45. Valuations of KMH's Series I stock as of December 31, 2003, and December 31,
25 2004, performed in 2005, failed to consider the impact of KMH's asbestos liability on Series I
26 stock of KMH. Valuation reports of Series I stock prepared for plan years 2000 and 2001 do not
27 mention potential asbestos liability at all, and the valuation report for plan year 2002 contains
28 only a brief mention of potential asbestos liability.

1 46. Upon information and belief, in or about 2005, the KMH Plan Committee, KMH,
2 and/or CIG re-negotiated the terms of the loan to the Plan used to purchase KMH shares.

3 47. Since KMH stock is and was not readily tradable on an established market, IRC §
4 409(h)(4) requires and has required at all relevant times that KMH give terminated participants
5 the right to have KMH repurchase the KMH securities held in their Plan accounts pursuant to a
6 put option. In the event that a participant terminates for a reason other than death, disability, or
7 normal retirement, IRC § 409(o)(1)(A)(ii) also requires and has required at all relevant times
8 that the Plan commence distribution of the participant's account not later than 1 year after the
9 close of the fifth plan year following the plan year in which the participant separates from
10 service.

11 48. When Plaintiff Smith contacted CIG regarding her put option in 2006, she was
12 informed by CIG that KMH would not be able to repurchase her shares until 2014 because of
13 new loan terms.

14 49. Upon information and belief, Defendant Fiduciaries have not informed Plan
15 participants that re-negotiated loan terms impair their put option rights.

16 50. The Plan paid substantially more than fair market value for the KMH stock
17 purchased from the Moore Family Trust in 1998 and 1999. The Defendant Fiduciaries could
18 have corrected the Plans' overpayment for KMH stock at any time since October 13, 1998, by
19 obtaining an independent valuation based on all relevant information, including but not limited
20 to full disclosure of KMH's financial state, including KMH's potential asbestos liabilities, and
21 then seeking a refund from the Moore Trust of any amount by which such a valuation
22 demonstrated that the Plans had overpaid for KMH stock. Despite this opportunity, Defendant
23 Fiduciaries failed to take any action to cure the breaches of fiduciary duty and prohibited
24 transactions, and in fact continued to intentionally withhold information about KMH's potential
25 asbestos liabilities from valuers, thereby continuing the breaches of fiduciary duty that began
26 in 1998.

27 51. Upon information and belief, until the Fall of 2004, Defendant Fiduciaries and
28 KMH management intentionally withheld information about the extent of KMH's potential

1 asbestos liability from participants who were active employees, including Plaintiff Fernandez,
2 that would have shown Plaintiff Fernandez and other participants that the Plans overpaid for
3 KMH stock. The Defendant Fiduciaries have intentionally withheld information about the
4 extent of KMH's potential asbestos liability from participants who are terminated employees,
5 including Plaintiff Smith.

6 52. Plaintiff Fernandez had no knowledge that the Plans' purchases of KMH stock
7 may have been for more than fair market value, including but not limited to knowledge that
8 more than fair market value may have been paid due to potential asbestos liability, until he was
9 informed of the jury verdict in the Union Carbide lawsuit in October of 2004. Plaintiff Smith
10 had no knowledge that the Plans' purchases of KMH stock may have been for more than fair
11 market value, including but not limited to knowledge that more than fair market value may have
12 been paid due to potential asbestos liability, until she was informed by letter in February of 2005
13 that no valuation of the Plan's stock had been completed for 2003 due to issues related to
14 potential asbestos liability. Plaintiffs had no knowledge that the Plans' purchase of KMH stock
15 may have been for more than fair market value due to the failure to discount the purchase price
16 of the stock to account for the fact that the stock purchased by the Plan was tracking stock until
17 the Plan Committee provided copies of valuation reports to Plaintiffs' counsel in 2006.
18 Plaintiffs have never had any knowledge regarding any steps taken by any Plan fiduciaries to
19 determine the share price for the October 13, 1998 transaction or the October 13, 1999
20 transaction, nor any knowledge of the matters alleged in Paragraphs 66, 73, and 74 below.

21 **CLASS ALLEGATIONS**

22 53. Plaintiffs bring the First and Second Claims for Relief for violations of ERISA
23 §§ 503(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3), as a class action pursuant
24 to Fed. R. Civ. P. 23 (a) and (b), on behalf of all persons other than Defendants who were
25 participants in the KMH Plan on October 13, 1998, or at any time thereafter, and/or
26 beneficiaries of KMH Plan participants on October 13, 1998 or at any time thereafter
27 (hereinafter "Class Plaintiffs").

28 54. The Plaintiff Class is so numerous that joinder of all members is impracticable.

1 Plaintiff is informed and believes, and on that basis alleges, that over 2,500 employees and
2 former employees were participants, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the
3 KMH Plan and held shares of KMH stock in their individual accounts as of December 31, 2004.
4 Although the exact number and identities of Class Members are unknown to Plaintiff at this
5 time, this information is easily ascertainable from the KMH Plan through discovery of its
6 records.

7 55. Questions of law and fact common to the Plaintiff Class as a whole include, but
8 are not limited to, the following:

9 i. Whether William E. Moore acted on behalf of both the Moore Trust and
10 the Kelly-Moore Paint Plan in the October 13, 1998 sale of Series P stock of KMH by the
11 Moore Trust to the Paint Plan;

12 ii. Whether William E. Moore acted on behalf of both the Moore Trust and
13 the CIG Plan in the October 13, 1999 sale of Series I stock of KMH by the Moore Trust to the
14 CIG Plan;

15 iii. Whether Defendant Moore Trust was a party in interest to the Paint Plan
16 at the time of the October 13, 1998 sale of Series P stock in KMH by the Moore Trust to the
17 Paint Plan and at other times thereafter;

18 iv. Whether Defendant Moore Trust was a party in interest to the CIG Plan at
19 the time of the October 13, 1999 sale of Series I stock in KMH by the Moore Trust to the CIG
20 Plan and at other times thereafter;

21 v. Whether Defendants engaged in a prohibited transaction under ERISA by
22 permitting the Paint Plan to purchase Series P stock of KMH from Defendant Moore Trust in
23 October 1998 for more than adequate consideration;

24 vi. Whether Defendants engaged in a prohibited transaction under ERISA by
25 permitting the CIG Plan to purchase Series I stock of KMH from Defendant Moore Trust in
26 October 1999 for more than adequate consideration;

27 vii. Whether Defendant Fiduciaries engaged in a prudent investigation of the
28 proposed sale of Series P KMH stock by Defendant Moore Trust to the Paint Plan;

1 viii. Whether Defendant Fiduciaries engaged in a prudent investigation of the
2 proposed sale of Series I KMH stock by Defendant Moore Trust to the KMH Plan;

3 ix. Whether Defendant Fiduciaries breached a fiduciary duty to Paint Plan
4 participants by purchasing Defendant Moore Trust's KMH Series P stock in October 1998 for
5 more than fair market value;

6 x. Whether Defendant Fiduciaries breached their fiduciary duties to KMH
7 Plan participants by failing to obtain a proper valuation of KMH Series I and Series P stock held
8 by the KMH Plan from January 1, 1998, to the present;

9 xi. Whether Defendant Fiduciaries breached their fiduciary duties to KMH
10 Plan participants by failing to obtain a timely valuation of the KMH stock held by the KMH
11 Plan, and failing to timely file IRS Form 5500s, for plan years 2003-2004;

12 xii. Whether Defendant Fiduciaries breached their fiduciary duties to KMH
13 Plan participants by failing to correct the overpayments by the KMH Plan and its predecessor
14 plans for Series I and Series P KMH stock from October 13, 1998, to the present;

15 xiii. Whether Defendants Desiree Moore and the Successor Trusts were
16 parties in interest to the Paint Plan at the time of the October 13, 1998 sale of Series P stock in
17 KMH by the Moore Trust to the Paint Plan and at other times thereafter, and are now parties in
18 interest to the KMH Plan;

19 xiv. Whether Defendants Desiree Moore and the Successor Trusts were
20 parties in interest to the CIG Plan at the time of the October 13, 1999 sale of Series I stock in
21 KMH by the Moore Trust to the CIG Plan and at other times thereafter, and are now parties in
22 interest to the KMH Plan.

23 56. Plaintiffs' claims are typical of those of the Plaintiff Class. Plaintiffs, like other
24 Plan participants in the Plaintiff Class, suffered a diminution in the values of their KMH and
25 predecessor plan accounts when the Plans purchased KMH stock owned by Defendant Moore
26 Trust for more than fair market value, and continue to suffer such losses in the present because
27 Defendant Fiduciaries have failed to correct the overpayment by the KMH Plan and its
28 predecessor plans.

57. Plaintiffs will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiffs have retained counsel competent and experienced in complex class actions, ERISA, and employee benefits litigation.

58. Class certification of Plaintiffs' First and Second Claims for Relief for violations of ERISA is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants, and/or because adjudications with respect to individual Class members would as a practical matter be dispositive of the interests of non-party Class members.

59. In addition, Class certification of Plaintiffs' First and Second Claims for Relief for violations of ERISA is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the Class as a whole. The members of the Class are entitled to declaratory and injunctive relief to remedy Defendants' fiduciary violations.

60. The names and addresses of the Plaintiff Class are available from the KMH Plan. Notice will be provided to all members of the Plaintiff Class to the extent required by Rule 23.

FIRST CLAIM FOR RELIEF
[Breach of Fiduciary Duty Under ERISA §§ 502(a)(2) and (a)(3),
29 U.S.C. §§ 1132(a)(2) and (a)(3), Against All Defendant Fiduciaries]

61. Plaintiffs incorporate Paragraphs 1-60 as though set forth herein.

62. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires, *inter alia*, that a plan fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

63. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or

1 duties imposed on fiduciaries by Title I of ERISA shall be personally liable to make good to the
2 plan any losses to the plan resulting from each such breach, and additionally is subject to such
3 other equitable or remedial relief as the court may deem appropriate, including removal of the
4 fiduciary.

5 64. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan participant to bring an
6 action for relief under ERISA § 409.

7 65. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring an
8 action to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to
9 enforce the terms of a plan.

10 66. Defendant Fiduciaries have breached their duties of loyalty and prudence under
11 ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1). These breaches include but are not limited to the
12 following: causing the Plans to pay more than fair market value for KMH stock; failing to
13 conduct a thorough and independent review and adequately consider whether the October 13,
14 1998 purchase of KMH Series P stock, and the October 13, 1999 purchase of KMH Series I
15 stock from Defendant Moore Trust was in the best interests of the Plan participants; failing to
16 undertake an adequate and independent valuation of the KMH stock prior to those transactions;
17 failing to ensure that they secured an independent expert assessment of the fair market value of
18 KMH stock prior to those transactions; failing to investigate adequately the qualifications of any
19 and all valuation experts retained to prepare the valuations of KMH stock in connection with the
20 transactions; failing to provide complete and accurate information regarding KMH to such
21 valuation experts for use in the valuations prepared in connection with the transactions; failing
22 to make certain that reliance on any and all valuation experts' advice was reasonably justified
23 under the circumstances of the transactions; failing adequately to consider how KMH's potential
24 asbestos liabilities affected the value of KMH Series I and Series P stock; failing adequately to
25 consider that the status of KMH Series I and Series P stock as "tracking stock" affected its
26 value; failing to make an honest, objective effort to read the valuation reports, understand them,
27 and question the methods and assumptions that did not make sense; failing to seek a refund of
28 the KMH Plan's overpayment for KMH stock at any time between 1998 and the present;

1 overvaluing the KMH stock purchased from Defendant Moore Trust by the KMH Plan in
 2 October 1998 and October 1999; withholding information about KMH's potential asbestos
 3 liabilities from valutors; and violating the terms of the plan document of the KMH Plan by
 4 refusing to redeem Plaintiff Smith's put option on the schedule established by the KMH Plan.
 5 Defendants' repeated failures to seek a refund of the Paint Plan's overpayment for KMH Series
 6 P stock at any time between 1998 and the present constitute part of the 1998 prohibited
 7 transaction. Defendants' repeated failures to seek a refund of the KMH Plan's overpayment for
 8 KMH Series I stock at any time between 1999 and the present constitute part of the 1999
 9 prohibited transaction. Defendants could have cured the breaches at any time since October 13,
 10 1998, by securing an independent valuation of the KMH Series I and Series P stock purchased
 11 by the Plans and seeking a refund from the Moore Trust and the Successor Trusts of any amount
 12 by which such valuation determined the Plans overpaid the Moore Trust.

13 67. Each Defendant Fiduciary is also liable as a co-fiduciary with respect to each
 14 fiduciary violation by each other fiduciary of the Plan under ERISA § 405, 29 U.S.C. § 1105, to
 15 the extent that: (a) any fiduciary has participated knowingly in, or has knowingly undertaken to
 16 conceal, an act or omission of any other fiduciary, knowing such action is a breach; (b) by his,
 17 her, or its failure to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), he, she, or it has
 18 enabled such other fiduciary to commit a breach; or (c) if he, she, or it has had knowledge of a
 19 breach by any other fiduciary, unless he, she, or it has made reasonable efforts under the
 20 circumstances to remedy the breach.

21 68. Defendant Fiduciaries' actions caused millions of dollars of losses to the Plan in
 22 an amount to be proven more specifically at trial.

23 **SECOND CLAIM FOR RELIEF**

24 **[Engaging in Prohibited Transaction Forbidden by ERISA §§ 406(a)-(b), 25 29 U.S.C. §§ 1106(a)-(b), Against All Defendants]**

26 69. Plaintiffs incorporate Paragraphs 1-60 as though set forth herein.

27 70. ERISA § 406(a), 29 U.S.C. § 1106(a), requires that a plan fiduciary "shall not
 28 cause the plan to engage in a transaction, if he knows or should know that such transaction
 constitutes a direct or indirect sale or exchange, or leasing of any property between the plan and

1 a party in interest,” or a “transfer to, or use by or for the benefit of, a party in interest, of any
2 assets of the plan.”

3 71. ERISA § 406(b), 29 U.S.C. § 1106(b), mandates that a plan fiduciary shall not
4 “act in any transaction involving the plan on behalf of a party (or represent a party) whose
5 interests are adverse to the interests of the plan or the interests of its participants,” or “deal with
6 the assets of the plan in his own interest or for his own account,” or “receive any consideration
7 for his own personal account from any party dealing with such plan in connection with a
8 transaction involving the assets of the plan.”

9 72. ERISA § 408(e), 29 U.S.C. § 1108(e) provides a conditional exemption from the
10 prohibited transaction rules for sale of employer securities to or from a plan if a sale is made for
11 adequate consideration. ERISA § 3(18)(B) defines adequate consideration as “the fair market of
12 the asset as determined in good faith by the trustee or named fiduciary.” ERISA’s legislative
13 history and existing case law make clear that ERISA § 3(18)(B) requires that the price paid must
14 reflect the fair market value of the asset, and the fiduciary must conduct a prudent investigation
15 to determine the fair market value of the asset.

16 73. Defendants engaged in a prohibited transaction in violation of ERISA §§ 406(a)-
17 (b), 29 U.S.C. §§ 1106(a)-(b), by failing to ensure that the Paint Plan paid fair market value for
18 Series P stock of KMH held by the Moore Trust on October 13, 1998. Specifically, the Paint
19 Plan paid more than fair market value for shares sold by the Moore Trust, and Defendants failed
20 to conduct an independent and prudent investigation into the fair market price before entering
21 into the stock purchase agreement with Defendant Moore Trust. Defendants’ repeated failures
22 to seek a refund of the Paint Plan’s overpayment for KMH Series P stock at any time between
23 1998 and the present constitute part of the 1998 prohibited transaction. Defendants could have
24 cured the prohibited transaction at any time since October 13, 1998, by securing an independent
25 valuation of KMH Series P stock as of October 13, 1998, and seeking a refund from the Moore
26 Trust and the Successor Trusts of any amount by which such valuation determined the Paint
27 Plan overpaid the Moore Trust.

28 74. Defendants engaged in a prohibited transaction in violation of ERISA §§ 406(a)-

(b), 29 U.S.C. §§ 1106(a)-(b), by failing to ensure that the KMH Plan paid fair market value for Series I stock of KMH held by the Moore Trust on October 13, 1999. Specifically, the KMH Plan paid more than fair market value for shares sold by the Moore Trust, and Defendants failed to conduct an independent and prudent investigation into the fair market price before entering into the stock purchase agreement with Defendant Moore Trust. Defendants' repeated failures to seek a refund of the KMH Plan's overpayment for KMH Series I stock at any time between 1999 and the present constitute part of the 1999 prohibited transaction. Defendants could have cured the prohibited transaction at any time since October 13, 1999, by securing an independent valuation of KMH Series I stock as of October 13, 1999, and seeking a refund from the Moore Trust and the Successor Trusts of any amount by which such valuation determined the KMH Plan overpaid the Moore Trust.

75. With respect to both the October 13, 1998 transaction and the October 13, 1999 transaction Defendants failed to, among other things, ensure that they secured an independent expert assessment of the fair market value of KMH stock prior to those transactions; investigate adequately the qualifications of any and all valuation experts retained to prepare the valuations of KMH stock in connection with the transactions; provide complete and accurate information regarding KMH to any valuation experts for use in the valuations prepared in connection with the transactions; and make certain that reliance on any and all valuation experts' advice was reasonably justified under the circumstances of the transactions.

76. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach, and additionally is subject to such other equitable or remedial relief as the court may deem appropriate, including removal of the fiduciary.

77. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan participant to bring a suit for relief under ERISA § 409.

78. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a

1 suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to
2 enforce the terms of a plan.

3 79. Defendant Moore Trust and Defendant Successor Trusts have profited in an
4 amount to be proven at trial from the prohibited transaction by receiving more than fair market
5 value for the KMH stock the Moore Trust sold to the Paint Plan on October 13, 1998, and to the
6 KMH Plan on October 13, 1999.

7 80. Defendant Fiduciaries have caused millions of dollars of losses to the KMH Plan
8 by the prohibited transactions in an amount to be proven more specifically at trial.

9 81. Each Defendant Fiduciary is also liable as a co-fiduciary with respect to each
10 fiduciary violation by each other fiduciary of the Plan under ERISA § 405, 29 U.S.C. § 1105, to
11 the extent that: (a) any fiduciary has participated knowingly in, or has knowingly undertaken to
12 conceal, an act or omission of any other fiduciary, knowing such action is a breach; (b) by his,
13 her, or its failure to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), he, she, or it has
14 enabled such other fiduciary to commit a breach; or (c) if he, she, or it has had knowledge of a
15 breach by any other fiduciary, unless he, she, or it has made reasonable efforts under the
16 circumstances to remedy the breach.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiffs pray for judgment against the Defendants on each Claim for Relief
19 and for the following relief:

20 **As to the First Claim for Relief:**

- 21 A. Certify this action as a class action pursuant to F.R.Civ.P.23;
- 22 B. Declare that the Defendant Fiduciaries, and each of them, have breached their
23 fiduciary duties to the Plaintiff Class;
- 24 C. Enjoin Defendant Fiduciaries, and each of them, from further violations of their
25 fiduciary responsibilities, obligations and duties;
- 26 D. Issue a preliminary and permanent injunction removing the Defendant
27 Fiduciaries, and each of them, as members of the KMH Plan Committee and Trustees of the
28 KMH Plan and/or barring the Defendant Fiduciaries, and each of them, from serving as

1 members of the KMH Plan Committee or Trustees of the KMH Plan in the future, and
2 appointing independent fiduciaries as Trustees and members of the KMH Plan Committee;

3 E. Order that Defendant Fiduciaries and each of them, make good to the KMH Plan
4 and/or to any successor trust(s) the losses resulting from their breaches and restoring any profits
5 they have made through use of assets of the KMH Plan;

6 F. Order that Defendant Fiduciaries provide other appropriate equitable relief to the
7 KMH Plan, including but not limited to, by forfeiting their KMH Plan accounts, providing an
8 accounting for profits, imposing a constructive trust and/or equitable lien on any funds
9 wrongfully held by any of the Defendant Fiduciaries;

10 G. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein
11 pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or for the benefit obtained for the
12 common fund;

13 H. Order Defendant Fiduciaries to pay prejudgment interest; and

14 I. Award such other and further relief as the Court deems equitable and just.

15 **As to the Second Claim for Relief:**

16 A. Certify this action as a class action pursuant to F.R.Civ.P.23;

17 B. Declare that the Defendants, and each of them, have breached their
18 fiduciary responsibilities and/or duties as parties in interest to the Plaintiff Class;

19 C. Enjoin Defendants, and each of them, from further prohibited transactions and
20 violations of their fiduciary responsibilities, obligations and duties.

21 D. Issue a preliminary and permanent injunction removing the Defendant
22 Fiduciaries, and each of them, as members of the KMH Plan Committee and Trustees of the
23 KMH Plan and/or barring the Defendant Fiduciaries, and each of them, from serving as
24 members of the KMH Plan Committee or Trustees of the KMH Plan in the future, and
25 appointing independent fiduciaries as Trustees and members of the KMH Plan Committee;

26 E. Declare that the Defendants and each of them engaged in prohibited transactions
27 in violation of ERISA §§ 406(a)-(b), 29 U.S.C. §§ 1106(a)-(b), by causing the Plan to purchase
28 KMH stock from Defendant Moore Trust for more than adequate consideration.

1 F. Order Defendants, and each of them, make good to the KMH Plan and/or to
2 any successor trust(s) the losses resulting from their breaches and restoring any profits they have
3 made through use of assets of the KMH Plan,

4 G. Order that Defendant Fiduciaries provide other appropriate equitable relief to the
5 KMH Plan, including but not limited to, by forfeiting their KMH Plan accounts, providing an
6 accounting for profits, imposing a constructive trust and/or equitable lien on any funds
7 wrongfully held by any of the Defendants, and/or tracing the KMH Plan assets received by
8 parties-in-interest;

9 H. Order Defendant Moore Trust, Defendant Successor Trusts, and/or other parties-
10 in-interest to return the payments they received for KMH stock sold to the Plan in October 1998
11 and October 1999 to the KMH Plan along with any profits that they have earned on these
12 payments, order Defendants to disgorge their profit from the prohibited transactions to the KMH
13 Plan, impose a constructive trust upon the profits earned by any of the Defendants from
14 violations of fiduciary obligations and duties as parties in interest, order an accounting for
15 profits by Defendants, trace the KMH Plan assets received by the Defendant Moore Trust,
16 and/or order other appropriate equitable relief.

17 I. Order Defendants to pay prejudgment interest.

18 J. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein
19 pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or for the benefit obtained for the
20 common fund; and

21 K. Award such other and further relief as the Court deems equitable and just.
22

23 Dated: May 25, 2007

Respectfully submitted,

25 LEWIS, FEINBERG,
26 RENAHER & JACKSON, P.C.

27 By: /s/
Todd Jackson
Attorneys for Plaintiffs
28